FAO No. 26 of 2007.

27.12.2007 Present: M/s. Gaurav Chopra, Vijay Arora and S.N. Singh, Advocates, for the appellant.

Mr. Rajiv Sood, Advocate, for respondent No.2.

Mr. Vikram Thakur, Advocate, for respondent No.9.

Mr. B.C. Negi, Advocate, for respondent No.12.

Ms. Ruma Kaushik, Advocate, for respondent No.13.

As a sequel to the order dated 20th December, 2007 Mr. Gaurav Chopra, learned Counsel appearing for the appellant submits that respondents No. 9 and 10 have since paid and, therefore, the appeal does not survive against them. He seeks to withdraw the appeal qua these two respondents. The appeal is dismissed qua these two respondents as withdrawn.

Respondents No. 2, 8, 12 and 13 now are the only four respondents left qua whom the appeal survives. Today, when the matter was taken up for consideration, it is found that respondent No.8 even though served is absent despite service. Therefore, exparte order against this respondent has to be passed. In so far as respondents No.12 and 13 are concerned, Mr. B.C. Negi, Advocate and Mrs. Kaushik, Advocate, appearing, respectively, for these two respondents both submit, state and undertake before me on behalf of their respective clients that they both shall be paying the amount in question to the appellant during the course of the day in token of their having accepted the licence between themselves and the appellant. On this statement being made, Mr. Gaurav Chopra seeks the leave of this Court to withdraw this appeal qua these two respondents also. The appeal accordingly is dismissed as withdrawn qua these two respondents.

Coming to respondents No.2 and 8, I find after hearing learned Counsel for the appellant as well as the learned Counsel for respondent No.2 that the learned Additional District Judge, Shimla by passing the impugned order dated 30th December, 2006 erred in refusing to grant ad-interim injunction in favour of the appellant in CMA No. 230-S/6 of 2006 on the only ground that the non-grant of the temporary injunction in favour of the appellant shall not cause any irreparable loss as far as the appellant is concerned because the appellant can be compensated by money. After agreeing with almost all the contentions of the appellant and returning the findings in its favour in the course of the impugned order, the learned trial Court adopted an unusual and peculiar course of action by rejecting the temporary injunction application on the aforesaid ground. In a case where the appellant had succeeded in convincing the learned trial Court that it had a good prima facie case, temporary injunction should not have been refused only on the ground of the appellant being compensated by money. If the appellant is the copyright holder of certain works, the persons who violate the appellant's copyright cannot be allowed to continue violating it with the fond hope, whether tenable or untenable, that at some point of time, the appellant can be compensated by money. I totally disapprove this view taken by the learned trial Court.

In so far as respondents No.2 and 8 are concerned, the appeal succeeds against them and while setting aside the impugned order qua these two respondents, I allow the appeal. As far as they are concerned, I restrain these two respondents, by issuance of a temporary injunction against them till the disposal of the suit, from playing the works of the appellant, copyright whereof is vested in the appellant. If these two

respondents in any way violate the copyright of the appellant, the appellant shall be at liberty to initiate proceedings against them.

The appeal is disposed of with no order as to costs.

CMPs No. 202 and 649 of 2007.

In view of the disposal of the appeal, both these applications are also disposed of and interim order dated 30th March, 2007 shall stand vacated immediately and forthwith.

December 27, 2007. **(V.K. Gupta), C.J.**
(rc)